DRAFT: 11 June 1970

The Honorable David N. Henderson, Chairman
Subcommittee on Manpower and Civil Service
Committee on Post Office and Civil Service
House of Representatives
Washington, D. C. 20515

My dear Mr. Chairman:

This is in response to your request for my views on S. 782, a bill to protect the civilian employees of the Executive Branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasion of their privacy.

I do not attempt to comment on the impact of S. 782 in general. My main concern is rather with its effect on the Central Intelligence Agency and the other agencies forming the intelligence community.

Certain provisions of S. 782 directly conflict with the statutory responsibilities of the Director of Central Intelligence for protecting intelligence sources and methods, and data relating to the organization of the Central Intelligence Agency. For example, the National Security Act of 1947 provides:

> "...the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;..." (50 USC 403(d)), and

the Central Intelligence Agency Act of 1949, as amended, provides:

> "In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102(d) (3) of the National Security Act of 1947 (Public Law 253, Eighth Congress, first session) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions...of any...law which require[s] the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency..." (50 USC 403g).

The adverse impact of S. 782 on the fundamental security interests of this Agency was developed in detail during my testimony before an executive session of your Subcommittee on 25 June 1968 in connection with S. 1035, an earlier version of S. 782. The sectional analysis of certain provisions of S. 782 which is enclosed restates our principal concerns.

S. 782 is an improvement over S. 1035 in several respects, but the adversary procedures which it authorizes pose the same critical problems inherent in S. 1035--the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

It is therefore my considered judgment that the Central Intelligence Agency requires a complete exemption from S. 782 such as Section 9 of the bill provides for the Federal Bureau of Investigation. It is also my belief that S. 782 creates serious problems for certain other components of the intelligence community, such as the National Security Agency, and I trust that their views will receive favorable consideration.

I shall be happy to provide any additional information you may request.

The Bureau of the Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

Richard Helms
Director

Enclosures: Sectional Analysis

Section-By-Section Analysis of Certain Provisions of S. 782

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the Executive Branch, or by any outside parties or organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter or subject other than the performance of official duties.

The purpose of this section is to protect employees from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties.

The language is so broad that it can be interpreted to prohibit a department or agency from taking notice of the attendance of an employee at meetings of subversive organizations or meetings designed to undermine the Government of the United States. Many departments and agencies, and particularly those dealing with security matters, would find such a prohibition intolerable.

Section 1 (d). Makes it unlawful to require an employee to make any report of his activities or undertakings not related to the performance of official duties unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

The purpose of this section is to guarantee the freedom of an employee to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or inaction, his involvement or his noninvolvement. It is to assure that he is free of intimidation or inhibition as a result of the employment.

This section is of primary importance to those agencies concerned with security matters which could be seriously compromised by employee activities and relationships not directly connected with his employment. Security agencies must request their employees to report contacts with foreign officials not only to give the employer notice of the relationship but also to protect the employee in his personal security should the foreign official be a member of an intelligence service. Similarly, the security agencies must request employees to submit publications and speeches for clearance in advance to insure that there is no inadvertent disclosure of intelligence information.

Section 1 (e). Makes it unlawful to require or request any applicant or employee to submit to any interrogation or examination designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters. The section also prohibits the use of psychological testing to inquire into these same areas. These questions may be asked only on the determination by a physician that they are necessary to enable him to determine whether or not an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge.

A partial exemption from this subsection is provided for CIA and the NSA in section 6. These agencies may use psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security.

Psychological testing in these areas is part of the total screening process which has been established to weed out applicants with undesirable traits. It is of primary concern to security agencies. The exemption provided by section 6 affords some relief, but it will still be necessary to make personal findings in each individual case. This implies that psychological screening is an exception rather than the necessary procedure in every case.

Section 1 (f). Prohibits the use of a polygraph test designed to elicit from an applicant or employee information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters.

The purpose is not to prohibit the use of the polygraph but to prohibit its use to elicit information considered to be of a personal nature.

A partial exemption from this subsection is provided for CIA and NSA in Section 6. The polygraph may be used in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the test is necessary to protect the national security. As with the psychological testing, polygraph testing is of primary concern to the security agencies who have found it to be not only an invaluable supplement to field investigations but uniquely effective in detecting certain types of security vulnerabilities. It is particularly useful in uncovering undesirable characteristics

which do not appear in field investigations. The requirement for individual findings in each case to obtain relief from this subsection implies that polygraph screening is an exception rather than a necessary procedure.

Section 1 (i). Makes it illegal to request any employee to disclose any items of his property, income, or other assets, sources of income, or liabilities. The first proviso excepts those employees who have authority to make final determination with respect to claims which require expenditure of monies of the United States. The second proviso excepts reports as may be necessary or appropriate for the determination of liabilities for taxes, tariffs, custom duties, or other obligations imposed by law.

A partial exemption for the NSA and the CIA has been granted in Section 6. Financial disclosure may be requested of an employee or applicant on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security. The broad language used could prohibit requesting certain information from employees for such things as credit union loans, health insurance reimbursements, and other programs designed for the welfare of the employee, which are not directly related to national security and thus not covered by the partial exemption granted CIA and NSA.

Section 1 (j). Makes it illegal to request financial disclosure from those employees excepted under the first proviso of subsection (i) other than specific items tending to indicate a conflict of interest.

Full financial disclosure assists both the employee and the Government in making what at best is a difficult decision as to conflict of interest. In the absence of full disclosure, it appears that this burden is placed entirely upon the employee.

Section 1 (k). Makes it illegal to require an employee who is under investigation for misconduct to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests. In the case of NSA and CIA, counsel must be either another employee of, or approved by, the agency involved.

This right inures to the employee at the inception of the investigation and does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend.

This section is understood to be of concern to all departments and agencies and could lead to a serious deterioration of employee discipline. If a supervisor asks an employee for an explanation of consistent tardiness the employee is entitled to counsel at this stage. The section is of even more concern to the security agencies which may find it necessary to interrogate an employee regarding activities related to security matters.

Section 1 (1). Makes it illegal to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit or comply with any requirement made unlawful by this act.

The purpose of this section is to prohibit discrimination against any employee because he refuses to comply with an illegal order as defined by this act or takes advantage of a legal right embodied in the act.

This section, combined with Section 4, could seriously undermine the authority of any executive agency to conduct its business. For example, any employee being transferred to a post to which he objects could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

The potential of this section when combined with Section 1 (1) is most serious. With the written consent of any person affected or aggrieved by a violation or threatened violation, any employee organization may bring action on behalf of such person, or may intervene in such action. This would appear to establish a basis for jurisdictional conflicts between competing unions. Further, this section and Section 5 establish two new forums for an employee who is terminated for cause to contest the termination on the issue of a violation of this act.

Since the court action authorized by the bill is against the offending supervisor rather than the department or agency, the practical result is litigation between one employee and another. This in turn could expose supervisors to continued harassment by disgruntled employees with the result of a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility.

With respect to applicants, this section has most serious implications. All departments and agencies would be subject to harassment by any applicant who is not hired for the position he feels qualified to fill. For example, subversives acting on their own or on instruction from foreign agents could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews.

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act short of recourse of the judicial system. It creates the same potential for harassment as Section 4. If the charged employee loses his case before the Board, he can still take it to the courts.

Section 6. Permits the CIA and the NSA to request employees or applicants to take a polygraph test or psychological testing designed to elicit information concerning his personal relationship to any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement if the Directors, or their designees, make a personal finding with regard to each individual case that the test or information is required to protect the national security. In view of previous comments in connection with subsection 1(e) (psychological testing) and with subsection 1(f) (polygraph) this section implies that these screening aids will be used as an exception rather than the necessary procedure in every case.

Section 7 requires an employee of CIA or NSA to give his employing agency 120 days to prevent threatened violation of the act, or redress an actual violation of the act, before proceeding before either the United States district court or the Board on Employees' Rights. This requirement for notice does not apply to CIA or NSA applicants who, along with all other executive branch employees and applicants, have a right to bring an action before the Board or the district court and disregard existing administrative remedies or grievance procedures.

The section reaffirms the existing statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to terminate the employment of any employee. However, the potential for statutory conflict still exists should the Director terminate an employee for cause under existing statutory authority and a district court order reinstatement on a finding of a violation of the act.

Section 8 recognizes the statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to protect or withhold certain information from unauthorized disclosure. However, information which the Director determines must be protected and not disclosed may actually provide the only basis for refuting unfounded allegations. Since the sanctions embodied in the bill run against the alledged offending employee not the Director making the determination, the net effect of withholding information to protect vital national interests is to make the charged employee bear the consequences, which can include loss of pay and even termination of employment. On the other hand, disclosure of such information with its consequential damage to the national intelligence effort is even less acceptable.

Section 9 grants the FBI a complete exemption from the act.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:
Legislative Counsel
7D35 Hqs

EXTENSION | NO.

DATE STAT

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. DDS				Attached is a proposed letter to Chairman Henderson setting forth the Agency's position on S. 782 in response to his request for the Director's views. Please let me have your concurrence or comments by noon tomorrow so that we can serve up a coordinated position to the Director and obtain his approval for transmittal to BOB for clearance to meet the Chairman STAT
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Concurrence:

[redacted] STAT

Robert L. Bannerman
Deputy Director
for Support

6 June 70
Date

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:
Legislative Counsel
7D35 Hqs

EXTENSION | NO.

DATE

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. General Counsel	6/11/70	6/11/70		Attached is a proposed letter to Chairman Henderson setting forth the Agency's position on S. 782 in response to his request for the Director's views. Please let me have your concurrence or comments by noon tomorrow so that we can serve up a coordinated position to the Director and obtain his approval for transmittal to BOB for clearance to meet the Chairman's deadline.
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[redacted] John M. Maury STAT

Concurrence:

Robert L. Bannerman Date
Deputy Director
for Support

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[redacted]

11 June

Lawrence R. Houston Date
General Counsel

as a blueprint for declassification should this be "confidential".

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Informational copy to

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